COLUMBIA LAW REVIEW.

VOL. IX. MARCH, 1909. No. 3

PARTNERSHIP REALTY.

In England the rule of law upon this subject is no longer open to doubt. Whenever land has become partnership property, it is to be treated as personal and not real estate, unless the contrary intention of the partners appears; and this out and out conversion of realty into personalty is enforced as between the heirs and the personal representatives of a deceased partner.[1] As English law, however, does not treat a firm as a legal person,[2] the legal title to partnership lands must be conveyed to the partners, or to some person as their trustee. This title devolves "according to the nature and tenure thereof and the general rules of law thereto applicable, but in trust * * * for the purposes of the partnership and in accordance with the partnership agreement."[3]

---

[1]Partnership Act, 1890 (53 & 54 Vict. c. 39) §22.

[2]*Ex parte* Corbett. *In re* Shand (1880) L. R. 14 Ch. D. 122; *In re* Beauchamp Brothers, L. R. [1894] 1 Q. B. 1, 7; Pollock on Partnership (5th Ed.) 20.

[3]Partnership Act, 1890 (53 & 54 Vict. c. 39) §20.

In Wray *v.* Wray, L. R. [1905] 2 Ch. 349, 79 L. J. Ch. 687, certain real estate was deeded to William Wray. This was the firm name, under which Eliza Wray, Henry Wray, William James Wray and Joseph Turnbull carried on a partnership business, and the premises were bought with firm funds and used in the firm business. Henry Wray retired from the firm, received from the other three, who continued the business in partnership, full payment of his share, and died without executing any conveyance of his interest in these premises, Warrington, J., said: "I have to ascertain who was meant by the person described as William Wray in the deed; and I find on the authority of Maugham *v.* Sharpe, 17 C. B. (N. S.) 443, that I may instead of William Wray read the deed as a conveyance to the four partners, Eliza Wray, Henry Wray, William James Wray and Joseph Turnbull. So reading the deed and inserting the names of the partners, it becomes a conveyance to these four persons. The legal estate is not affected by the fact that the purchase-money was partnership property; and the beneficial interest was already vested in the four partners. I will therefore make a declaration that the legal estate passed to the plaintiffs and Henry Wray as joint tenants, and that on the death of Henry Wray it passed to and is now vested in the three continuing partners in fee simple."

The same rule prevails in Scotland,[4] also, as well as in the English-speaking colonies of Great Britain.[5]

SOME DISCORDANT DECISIONS.

While the Scotch courts have always applied the doctrine stated above, there are a few English decisions which are at variance with it. The line begins with *Thornton* v. *Dixon*.[6] Certain lands had been acquired by a partnership of paper-makers "for the better carrying on the trade." After the dissolution of the firm by the death of a partner, his heir claimed the decedent's share in the aforesaid lands, while the personal representative insisted that the entire property of the firm should be distributed as personalty. Lord Chancellor Thurlow is reported to have said at the first hearing that "he had always understood that when partners bought lands for the purpose of a partnership concern, it was to be considered as part of the partnership fund; and that, consequently, these lands must be considered as personal estate and distributable as such." But "his Lordship gave liberty to argue the nature of the property, if the proposition on that point could not be maintained." After such argument, he expressed the opinion "that had the agreement been that the mills should be valued and sold, it would have converted them into personalty of the partnership; but that the agreement in this case was not sufficient to vary the nature of the property; therefore, that after the dissolution the property would result according to its respective nature, the real as real, the personal as personal estate."[7]

This doctrine was applied by Sir William Grant, M. R.,[8] and

[4]Statute cited in notes 1 and 3; Young *v.* Campbell (1790) 10 Fac. Dec. 196; Corse *v.* Corse (1802) 13 Fac. Dec. 162; Murrays *v.* Murray (1805) 13 Fac. Dec. 441; Minto *v.* Kirkpatrick (1833) 11 Sess. Cas. 632; Irvine *v.* Irvine (1851) 13 Sess. Cas. (2d Series) 1367.

[5]*Ex parte* Banks (1828) 1 Newfoundland R. 349; Prentiss *v.* Brennan (1850) 1 Gr. Ch. 484; Wylie *v.* Wylie (1854) 4 Gr. Ch. 278; Sanborn *v.* Sanborn (1865) 11 Gr. Ch. 359; Conger *v.* Platt (1866) 25 U. C. Q. B. 277; Cameron *v.* Cameron (1867) 1 N. Z. App. 24; *In re* Music Hall Block (1885) 8 Ont. 225; *In re* Cushing's Estate (1894) New Bruns. Eq. 102; Walker *v.* Creavaix (1905) 25 N. Z. L. R. 329.

[6](1791) 3 Bro. C. C. 199.

[7]In the following year, Lord Thurlow is reported as again expressing the view, which he stated at first in Thornton *v.* Dixon: that if persons in trade purchase lands for the purposes of trade, there is an equitable conversion into personalty; and no intimation is given that an additional agreement for conversion is needed. Lyster *v.* Dolland (1792) 1 Ves. Jr. 431, 434, 3 Bro. C. C. 478, 480.

[8]Bell *v.* Phyn (1802) 7 Ves. 453. London merchants, with firm funds, bought and improved a plantation in Grenada, and the accounts relating to it were kept in the firm books; but on the authority of Thornton *v.* Dixon, the land was held not to have been converted into personalty: Balmain *v.* Shore (1804) 9 Ves. 500.

by Vice Chancellor Shadwell,[9] but it never met with the approval of the legal profession in England,[10] and was thoroughly discredited, even before the passage of the Partnership Act.

Lord Eldon repeatedly criticized the doctrine, and at least two of his decisions cannot be reconciled with it. Upon the hearing of a Scotch case in the House of Lords,[11] he is reported to have said: "Till the case decided by Lord Thurlow, we lawyers always considered the real estate belonging to a partnership as personal, in point of succession; and we have always wished to get out of this case of Lord Thurlow." On another occasion,[12] he is credited with the remark: "My own individual opinion is that all property involved in a partnership concern ought to be considered as personal." These views are embodied, also, in his decisions in *Ripley* v. *Waterworth*,[13] *Townsend* v. *Devaynes* [14] and *Crawshay* v. *Maule*.[15]

Lord Eldon's Views Prevail.

Although Vice Chancellor Shadwell, in the cases already noted, threw his influence upon Lord Thurlow's side, most English judges who had occasion to consider the subject accepted Lord Eldon's doctrine that real estate, when it becomes partnership property, is

---

[9]Randall *v.* Randall (1835) 7 Sim. 271, 4 L. J. Ch. 187, 40 R. R. 142. Lands were bought with partnership funds but not used in the firm business, and no agreement for their sale; Cookson *v.* Cookson (1837) 8 Sim. 529. Lands not acquired with firm funds, but put in as grantee's share of firm capital; no agreement for sale on dissolution, and not needed to pay firm debts.

[10]Watson on Partnership (2nd Ed., 1807) p. 81 (1st Amer. Ed. p. 60): "It seems formerly to have been held, that lands purchased for the purpose of a partnership concern were in all respects a portion of the partnership fund, and were therefore distributable as personal property." Montague on Partnership (2nd Ed. 1822) Vol. I, p. 139: "It seems that the partner's interest in partnership real property is, upon his death, distributable as personal property." The author treats Thornton *v.* Dixon as overruled. Collyer on Partnership (1832) pp. 70-76. In Forster *v.* Hale (1800) 5 Ves. 308, 309, Lord Loughborough ruled that leases of premises necessary for the purposes of the partnership are, by operation of law, held for the purposes of the partnership, and, hence, personalty. See Alder *v.* Fouracre (1818) 3 Swanst. 489, for similar holding.

[11]Kirkpatrick *v.* Sime (1811) 5 Paton. Sc. App. 525, 535-6. The same case is reported in Fac. Col. 1812-14, appendix 684, under the title of Sime *v.* Balfour, where Lord Eldon is quoted thus: "It is the better rule to say that partners hold partnership property as trustees and the whole becomes personal property."

[12]Selkrig *v.* Davies (1814) 2 Dow. 230, 242.

[13](1802) 7 Ves. 425, holding that there was an out and out conversion of the realty into personalty.

[14](1811) Montague on Partnership, Appendix, p. 96; 11 Sim. 498, note; holding partnership lands to be personal property.

[15](1818) 1 Swanst. 495, 508, 526, 530, 1 Wil. 181, 18 R. R. 126: "It has been repeatedly decided that interests in lands, purchased for the purpose of carrying on trade, are no more than stock in trade."

converted into personalty out and out. "It is a principle" of partnership law, said Sir John Leach, M. R., "that all property, whether real or personal, is subject to a sale on a dissolution of the partnership." [16] No special agreement of the partners for the valuation and sale of real estate is necessary, in order to convert it into personalty. "It is the clear principle of a court of equity, in the law of partnership * * * that the mere contract of partnership, without any express stipulation, involves in it an implied contract, quite as stringent as if it were expressed, that, at the dissolution of the partnership, all the property then belonging to the partnership, whether it be ordinary stock in trade, or a leasehold interest, or a fee-simple estate in land, shall be sold, and the net proceeds, after satisfying all the partnership debts and liabilities, be divided among the partners; and that each partner and the representative of any deceased partner, have a right to insist on this being done." [17]

Moreover, it is in accordance with general convenience that partnership realty should be treated as converted for all purposes into personalty.[18] It avoids all "the inconvenient consequences of the surviving partners being entangled by a tenancy in common with the heir," [19] and it enables the surviving partner to exercise his acknowledged right to wind up the affairs of the firm, without interference from the heirs of the deceased partner.[20] Again, the doctrine of out and out conversion follows logically from the accepted principle, that a "partner's share is nothing more than his proportion of the partnership assets, after they have been turned into money and applied in liquidation of the partnership debts." [21]

---

[16]Fereday *v.* Wightwick (1829) 1 R. & M. 45, 49, Taml. 250, 261, 33 R. R. 136.

[17]Sir R. T. Kindersley, V. C. in Darby *v.* Darby (1856) 3 Drew. 495, 503-506, 25 L. J. Ch. 371, 2 Jur. (N. S.) 271, 4 W. R. 413.

[18]Phillips *v.* Phillips (1832) 1 Myl. & K. 649, 663, 1 L. J. Ch. (N. S.) 214, 36 R. R. 410; Holroyd *v.* Holroyd (1859) 7 W. R. 426, 28 L. J. Ch. 902, 903.

[19]*In re* Lord Grimthorpe, Beckett *v.* Grimthorpe, L. R. [1908] 1 Ch. 666, 675, 77 L. J. Ch. 321.

[20]*In re* Clough, Bradford Commercial Banking Co. *v.* Cure (1885) L. R. 31 Ch. D. 324, 55 L. J. Ch. 77, 53 L. T. 716, 31 W. N. 96; *In re* Bourne, Bourne *v.* Bourne, L. R. [1906] 2 Ch. 427, 432, 433, 75 L. J. Ch. 779, aff'g L. R. [1906] 1 Ch. 113.

[21]Lindley on Partnership (7th Ed.) p. 381. The following cases adopt Lord Eldon's views: Broom *v.* Broom (1834) 3 Myl. & K. 443; Morris *v.* Kearsley (1836) 2 Y. & C. 139, 141, 47 R. R. 379; Houghton *v.* Houghton (1841) 11 Sim. 491, 506, 10 L. J. Ch. 310, 5 Jur. 528; Essex *v.* Essex (1855) 20 Beav. 442, 4 W. R. Ch. 60; Waterer *v.* Waterer (1873) 15 Eq. 402, 21 W. R. 508; Davies *v.* Games (1879) L. R. 12 Ch. D. 813, 28 W. R. 16; Murtagh *v.* Costello (1881) 7 L. R. Ir. 428, 435-6; West of

Land may be used by a partnership, however, without becoming firm property.[22] On the other hand, although it has become firm property, the partners may by agreement prevent its out and out conversion into personalty.[23] Whether land has become firm property or not, and whether the partners have agreed to prevent its conversion or not, may be questions which are not easy to answer in a particular case, as shown by the authorities cited in the last two notes; but the difficulty in England is one of fact, and not of law.

Although this legal rule cannot be considered to have been definitely announced, until the masterly opinion in *Darby* v. *Darby*,[24] it is not a modern rule. As shown by the remarks of Lord Eldon, and by the extracts from Watson, Collyer and other writers, already quoted, the doctrine of out and out conversion had not been questioned, until the decision of Lord Thurlow, in *Thornton* v. *Dixon*. On the contrary, it was an accepted doctrine of the law merchant, and was a logical corollary from the maxim *jus accrescendi inter mercatores locum non habet*,[25] and from the power and duty of the surviving partner to settle the affairs of the firm and account to the representatives of the deceased partner for his share of the firm assets.[26]

Out and Out Conversion in the United States.

Chancellor Kent gave unqualified approval to this doctrine; declaring that partnership real estate is deemed in equity a part of

---

England etc. Bank *v.* Murch (1883) L. R. 23 Ch. D. 138, 52 L. J. Ch. 784, 48 L. T. 417, 31 W. R. 467; *In re* Wilson, Wilson *v.* Holloway, L. R. [1893] 2 Ch. 240, 62 L. J. Ch. 781, 3 R. 525, 68 L. T. 785, 41 W. R. 684.

[22]Steward *v.* Blakeway (1869) L. R. 4 Ch. App. 603, aff'g (1869) L. R. 6 Eq. 479; Davis *v.* Davis, L. R. [1894] 1 Ch. 393, 63 L. J. Ch. 219, 8 R. 133, 70 L. T. 265, 42 W. R. 312, cf. Jackson *v.* Jackson (1802) 7 Ves. 535, (1804) 9 Ves. 591, with Brown *v.* Oakshot (1857) 24 Beav. 254.

[23]*In re* Wilson, Wilson *v.* Holloway, L. R. [1893] 2 Ch. 340, 343, 62 L. J. Ch. 781, 3 R. 525, 68 L. T. 785, 41 W. R. 684.

[24](1856) 3 Drew. 495.

[25]Jeffreys *v.* Small (1683) 1 Vern. 217, Eq. Cas. Abr. 370, pl. 1; Lake *v.* Gibson (1829) 1 Ch. Cas. Abr. 290, pl. 3, s. c. *sub nom.*. Lake *v.* Craddock (1732) 3 P. W. 158, White & Tudor's Lead Cas. in Equity, pp. 215, 217, 221, Sugden's Vendor & Purchaser (11th Ed.) p. 903.

[26]See Usher *v.* Ayleward (1685) 1 Vern. 360, 361-2; Kemp *v.* Andrews (1690) Carth. 170; Martin *v.* Crompe (1696) 1 Ld. Ray. 340, Comb. 474, 2 Salk 444; Elliot *v.* Brown (1791) 3 Swanst. 489, note; Lyster *v.* Dolland (1792) 1 Ves. Jr. 431, 3 Bro. C. C. 478, 480; Morley *v.* Bird (1798) 3 Ves. Jr. 628, 631; Jackson *v.* Jackson (1804) 9 Ves. 591, 596; and the analogous cases of a joint mortgage to secure the several claims of the mortgagees, Petty *v.* Styward (1632) 1 Rep. Cas. in Ch. 57, 1 Eq. Cas. Abr. 290; Rigden *v.* Vallier (1751) 2 Ves. Jr. 252, 258; Steeds *v.* Steeds (1889) L. R. 22 Q. B. D. 537, 541, 58 L. J. Q. B. 302; where the estate in the land is declared to be only an accessory to the right to the money secured by it.

the partnership fund; that the holder of the legal estate is "trustee for the whole concern, and the property will be entitled to be distributed as personal estate." [27] After commenting upon certain cases in New York and Massachusetts, which he pronounced "subversive of the equity doctrine now prevalent in England," he said:

"These decisions appear to me to be a sacrifice of a principle of policy, and, above all, a principle of justice, to a technical rule of doubtful authority. There is no need of any other agreement than what the law will necessarily imply, from the fact of an investment of partnership funds, by the firm, in real estate, for partnership purposes." [28]

Similar views were expressed by Judge Story, in a very carefully considered decision,[29] and in his Equity Jurisprudence.[30] Later, in his treatise on Partnership, while supporting out and out conversion as correct in principle, he was constrained to admit that, in this country, "upon this point there has been a diversity of judicial opinion, as well as of judicial decision," and that "the doctrine under these circumstances must be considered as open to many distressing doubts." [31] This lament has been echoed and reechoed by American judges to the present time.[32]

Chancellor Kent's view, that land which has become a part of the partnership is converted into personalty without any other agreement than that which is implied from the partnership relation, has been accepted and enforced in a few states. In Virginia, it is held that such land "is to be considered to every intent as personal property, not only as between the members of the part-

---

[27] 3 Kent's Commentaries, 37.

[28] *Ibid.* 39, and note b.

[29] Hoxie *v.* Carr (1832) 1 Sumn. 173, 12 Fed. Cas. 746.

[30] First Edition (1835) § 674. "In a court of equity the real estate is treated, to all intents and purposes, as a part of the partnership funds, whatever may be the form of the conveyance. For a court of equity considers the real estate, to all intents and purposes, as personal estate. * * * Upon the death of one partner it belongs in equity, not to the heirs at law, but to the personal representatives and distributees of the deceased; unless, perhaps, there be a clear and determinate expression of the deceased party, that it shall go to the heirs at law beneficially."

[31] Story on Partnership (1st Ed. 1841) § 93.

[32] Hale *v.* Plummer (1855) 6 Ind. 121, 123; "Upon looking into the authorities, it is quite evident that the effort to reconcile them would be a hopeless task;" Hewitt *v.* Rankin (1875) 41 Ia. 35, 39: "Counsel have argued the question of law presented with great industry and research, and have at least demonstrated the want of harmony in the authorities, and the impossibility of deducing therefrom rules that will accord with all;" Cornwall *v.* Cornwall (1869) 7 Bush. (69 Ky.) 369, 372; Buchan *v.* Sumner (N. Y. 1847) 2 Barb. Ch. 165, 200.

nership respectively, and their creditors, but also as between the surviving partner and the representatives of the deceased." [33] The Supreme Court of Texas has declared that "real estate is absolutely treated as personal estate." [34] Ohio courts appear to favor the doctrine of out and out conversion, when the property is bought with firm funds for firm purposes and used solely in the partnership business, even though no express agreement for conversion is shown.[35] Such is the rule in Kentucky, it is submitted,[36] notwithstanding two or three decisions which are well calculated to generate "distressing doubts." [37] Connecticut, also, has adopted this rule.[38]

One of the clearest and most persuasive statements of the principles upon which the doctrine of out and out conversion of partnership real estate rests, is found in an early decision in Tennessee.[39] In brief, the statement is this: The surviving partner is to pay all debts due from the firm, to ascertain the value of what remains; to ascertain also the share thereof that belonged to the deceased partner and pay his share of it to his executors. To do this, he must have an absolute and unconditioned property and dominion over all the estate of the firm. If his authority to sell were conditioned upon the necessity of a sale to pay firm debts, who could know, when inclined to become a purchaser, whether

[33]Miller *v.* Ferguson (1907) 107 Va. 249, 251, 57 S. E. 649; Williams *v.* Kendrick (1906) 105 Va. 791, 54 S. E. 865; Deering *v.* Kerfoot (1892) 89 Va. 491, 16 S. E. 671; Parrish *v.* Parrish (1892) 88 Va. 529, 532, 14 S. E. 325; Hardy *v.* Norfolk Mfg. Co. (1885) 80 Va. 404; Diggs' Adm'r. *v.* Brown (1884) 78 Va. 292; Pierce *v.* Trigg (1839) 10 Leigh (37 Va.) 406, 424,—the land was purchased with firm personalty and by making it firm stock, the intention was evinced to treat it as personalty.

[34]Baldwin *v.* Richardson (1870) 33 Tex. 16, 27-9.

[35]Sumner *v.* Hampson (1838) 8 Oh. 328, 339; Ludlow *v.* Cooper (1854) 4 Oh. St. 1, 9; Rammelsberg *v.* Mitchell (1875) 23 Oh. St. 22, 52-4. Cf. Jones *v.* De Camp (1903) 2 Oh. N. P. (N. S.) 133, 141, declining to apply the doctrine to a farming partnership.

[36]Divine *v.* Mitchum (1844) 4 B. Mon. (43 Ky.) 488, 491, 41 Am. Dec. 241; Cornwall *v.* Cornwall (1869) 7 Bush. (69 Ky.) 369; Holmes *v.* Self (1881) 79 Ky. 297; Garth *v.* Davis (1905) 120 Ky. 106, 110, 85 S. E. 692. "In this state the doctrine prevails that partnership real estate is deemed personalty for the purposes of the partnership."

[37]Galbraith *v.* Gedge (1855) 16 B. Mon. (55 Ky.) 631,—held, on the facts of this case, that the partners had not impressed upon the land the character of personal estate; Lowe *v.* Lowe (1878) 13 Bush. (70 Ky.) 688, 696, a partnership in farming, and no agreement, express or implied, shown, to convert the land into personalty; Carter, Surviving Partner *v.* Flexner (1891) 92 Ky. 400, 403, 17 S. W. 851.

[38]Sigouney *v.* Munn (1828) 7 Conn. 11, 19-20; Beecher *v.* Stevens (1876) 43 Conn. (Suppl.) 587, 592. (U. S. Dist. Ct.) In Dickinson *v.* Dickinson (1861) 29 Conn. 600, it is held that "the only mode of disposing of partnership property, in the absence of an agreement of the parties, is by a sale."

[39]McAllister *v.* Montgomery (1816) 3 Hay. (5 Tenn.) 94.

such necessity existed or not. In order, then, that the survivor may be able to settle up the affairs of the firm, the land as well as the goods of a partnership must be alienable by him, and hence the real estate must be deemed converted into personalty by the partnership relation, without any further agreement upon the topic. By a statute,[40] however, as construed in this case, any surplus arising from the sale of partnership lands after paying firm debts and adjusting the equities between the partners, was to be paid to the deceased partner's heirs, instead of being distributable as personalty. In later cases in that state, attempts have been made to change the construction put upon this statute; but without success.[41] Repeatedly, however, Tennessee judges have lamented the existence of this legislation, and have expressed their preference for the doctrine of out and out conversion.[42]

In a number of decisions, in other states, dicta are to be found which are broad enough to commit their authors to the rule sanctioned by Eldon, and Kent and Story.[43]

CONVERSION BY AGREEMENT.

It is generally held that partnership real estate may be converted into personalty for all purposes, by the agreement of the partners. There are differences of opinion, however, as to the form which such agreement must take, in order to be effective.

In Pennsylvania, the agreement must be "by deed or writing, placed on record, that purchasers and creditors may not be deceived." [44] This rule, Chief Justice Gibson thought, was deducible

[40]Act of 1784, c. 22, § 6; now § 3678 Code of Tennessee (1896).

[41]Yeatman *v.* Woods (1834) 6 Yerg. (14 Tenn.) 20; Piper *v.* Smith (1858) 1 Head (38 Tenn.) 930; Williamson *v.* Fontain (1874) 7 Baxt. (66 Tenn.) 212.

[42]Yeatman *v.* Woods (1834) 6 Yerg. (14 Tenn.) 20, 23; Piper *v.* Smith (1858) 1 Head (38 Tenn.) 930; Griffey *v.* Northcutt (1871) 5 Heisk. (52 Tenn.) 746, 757; Solomon *v.* Fitzgerald & Co. (1872) 7 Heisk. (54 Tenn.) 552; Griffey *v.* Northcutt (1875) 3 Shannon's Cases 625. Other views have been expressed in a few cases, *e. g.* Jones *v.* Sharp (1872) 9 Heisk. (56 Tenn.) 660; Alabama Marble & S. Co. *v.* Chattanooga Marble & S. Co. (Tenn. Ch. App. 1896) 37 S. W. 1004.

[43]Breen *v.* Richardson (1883) 6 Colo. 605; Makee & Peck *v.* Dominis & Bishop (1874) 3 Haw. 579; McKee *v.* Covalt (1905) 71 Kan. 772, 775, 81 Pac. 475; Moran *v.* Palmer (1865) 13 Mich. 367, 377; Merritt *v.* Dickey (1878) 38 Mich. 41; Richardson *v.* Wyatt (S. C. 1807) 2 Desaus Eq. 471; Boyce *v.* Costa (S. C. 1848) 4 Strobh. Eq. 25; Betts *v.* Lecher (1890) 1 S. D. 182, 198, 46 N. W. 193; see Utah Compiled Laws (1907) § 3918; Rice *v.* Barnard (1848) 20 Vt. 479, 484; Zane *v.* Sawtell (1877) 11 W. Va. 43, 50; Claggett *v.* Kilbourne (U. S. 1861) 1 Black 346, 349, 17 L. Ed. 213; Allen *v.* Withrow (1883) 110 U. S. 119, 3 Sup. Ct. 517, 28 L. Ed. 90.

[44]Hale *v.* Henrie (Pa. 1834) 2 Watts 143, 27 Am. Dec. 289, following but extending McDermott *v.* Lawrence (Pa. 1821) 7 S. & R. 438, and Connelly *v.* Withers (Pa. 1831) 9 Lanc. Bar. 117.

from the policy of the recording acts, which requires the deed of real property to show the title of the grantees; and forbids the use of parol evidence to show "that a deed to two persons as tenants in common was purchased and paid for by them as partners and was partnership property."[45] That the doctrine has been unsatisfactory to partnership creditors and to the legal profession is disclosed by the repeated attempts to overthrow it.[46] Even judges who have felt themselves bound by "an unbroken line of decisions," so far as the rights of third persons are concerned, have declined to apply the doctrine in contests between the partners themselves,[47] or in cases where title has been taken in the names of trustees, either actual[48] or constructive.[49] Still, they are disposed to criticise the doctrine of out and out conversion, and to limit its application to the needs of the firm, while engaged in business, and for the payment of firm debts.[50]

In most jurisdictions it is held that the agreement need not be in the deed by which the land is conveyed to the partners. It may

---

[45]Cundey *v.* Hall (1904) 208 Pa. 335, 57 Atl. 761, 101 Am. St. R. 938; Pontius *v.* Walls (1899) 197 Pa. 223, 47 Atl. 203; Fair Hope etc. Brick Co.'s Assigned Estate (1897) 183 Pa. 96, 38 Atl. 519; *Ibid.* 183 Pa. 103, 38 Atl. 1102; Stover *v.* Stover (1897) 108 Pa. 425, 36 Atl. 921, 57 Am. St. R. 654; Gunnison *v.* Erie Dime Savings & Loan Co. (1893) 157 Pa. 303, 27 Atl. 747; Shafer's Appeal (1884) 106 Pa. 49; Appeal of Leaf (1884) 105 Pa. 505; Du Bree *v.* Albert (1882) 100 Pa. 453, 483,—in this last case the land was conveyed to partners "as a firm to be held by them as partnership property," and hence a judgment against one partner did not become a lien thereon; Meily *v.* Wood (1872) 71 Pa. 488, 494,—similar to last preceding case; Van Dike's Appeal (1868) 57 Pa. 9; Coder *v.* Hulin. (1856) 27 Pa. 84; Ridgway, Budd & Co.'s Appeal (1850) 15 Pa. 177; Overholt's Appeal (1849) 12 Pa. 222,—record appears to have shown that the land was bought, owned and used as firm property; Harding *v.* Devitt (1873) 10 Phila. 95, 30 Leg. Int. 416.

[46]Ebbert's Appeal (1871) 70 Pa. 79,—the court declared that the "equity set up to overturn the rule was too subtle"; Appeal Sec. Nat. Bank of Titusville (1876) 83 Pa. 203; Appeal of Geddes & Wife (1877) 84 Pa. 482; Holt's Appeal (1881) 98 Pa. 257; Miller's Estate (1893) 14 Pa. Co. Ct. 147.

[47]Erwin's Appeal (1861) 39 Pa. 535; Abbott's Appeal (1865) 50 Pa. 234; Appeal of Leaf (1884) 105 Pa. 505; Collner *v.* Greig (1890) 137 Pa. 606; Moore *v.* Wood (1895) 171 Pa. 365, 33 Atl. 63; Hayes *v.* Treat (1896) 178 Pa. 310, 35 Atl. 987; Stover *v.* Stover (1897) 180 Pa. 425, 36 Atl. 921, 57 Am. St. R. 654; Title & Trust Co. *v.* Bell (1898) 188 Pa. 637, 41 Atl. 637; Account of Welles, Haeberly's Appeal (1899) 191 Pa. 239, 43 Atl. 207; Williams *v.* Morgan (1900) 26 Pa. Co. Ct. 81.

[48]Kramer *v.* Nicholson (1847) 7 Pa. 165; Oliver's Estate (1890) 136 Pa. 43, 20 Atl. 527; Cronkrite *v.* Trexler (1898) 187 Pa. 100, 41 Atl. 22.

[49]Erwin's Appeal (1861) 39 Pa. 535; Ebbert's Appeal (1871) 70 Pa. 79; Lefevre's Appeal (1871) 69 Pa. 122,—held that there was no resulting trust here, as against strangers, mortgagees, purchasers and creditors; Kepler *v.* Erie Dime Savings Bank (1882) 101 Pa. 602.

[50]Account of Welles, Haeberly's Appeal (1899) 191 Pa. 239, 43 Atl. 207.

be contained in the partnership articles;[51] or in some other writing[52] or it may be inferred from the nature of the firm's business, as when this consists in buying and selling real estate,[53] or from the unequivocal conduct of the parties.[54]

PARTIAL CONVERSION.

Even when no agreement, express or implied, exists for out and out conversion, the courts are disposed to treat firm real estate as converted into personalty to the extent needed for the payment of firm debts and the adjustment of partners' equities.[55] There

[51]Davis *v.* Smith (1887) 82 Ala. 198.

[52]Rovelsky *v.* Brown & Smith (1890) 92 Ala. 522, 9 So. 182; Maddock *v.* Astbury (1880) 32 N. J. Eq. 181; Darrow *v.* Calkins (1897) 154 N. Y. 503, 49 N. E. 61, 48 L. R. A. 299, 61 Am. St. R. 637, aff'g (N. Y. 1896) 6 App. Div. 28, 39 N. Y. Supp. 527; Green *v.* Green (1824) 1 Oh. 535; Ferris *v* Van Ingen (1900) 110 Ga. 102, 35 S. E. 347; Nicoll *v.* Ogden (1862) 29 Ill. 323.

[53]Patrick *v.* Patrick (1906) 71 N. J. Eq. 347, 63 Atl. 848; Buckley *v.* Doig (1907) 188 N. Y. 238, 80 N. E. 913, aff'g (1906) 115 App. Div. 413, 100 N. Y. Supp. 869; Sumner *v.* Hampson (1838) 8 Oh. 328; Flower *v.* Barnekoff (1890) 20 Ore. 132, 25 Pac. 370; Boyce *v.* Coster (S. C. 1848) 4 Strobh. Eq. 25; Case *v.* Seger (1892) 4 Wash. 492, 30 Pac. 636; Smith *v.* Burnham (U. S. 1838) 3 Sumn. 435, 22 Fed. Cas. 477; Claggett *v.* Kilbourne (U. S. 1861) 1 Black 346, 17 L. Ed. 213; Holliday *v.* Land & River Imp. Co. (1893) 57 Fed. 774, 18 U. S. App. 308.

[54]Ludlow *v.* Cooper (1854) 4 Oh. St. 1; Rammelsberg *v.* Mitchell (1875) 23 Oh. St. 22, 52-7; Wilson *v.* Wilson (1906) 74 S. C. 30, 54 S. E. 227; Allen *v.* Withrow (1883) 110 U. S. 119, 3 Sup. Ct. 517, 28 L. Ed. 90; Sprague Mfg. Co. *v.* Hoyt (1886) 29 Fed. 421.

[55]Lang's Heirs *v.* Waring, Survivor (1854) 25 Ala. 625, 60 Am. Dec. 533; Murphy *v.* Abrams (1874) 50 Ala. 293; Butts *v.* Cooper (Ala. 1907) 44 So. 616; Dupuy *v.* Leavenworth (1861) 17 Cal. 262; Bates *v.* Babcock (1892) 95 Cal. 479, 30 Pac. 605, 16 L. R. A. 745; Black *v.* Black (1854) 15 Ga. 445; Taylor *v.* McLaughlin (1904) 120 Ga. 703, 48 S. E. 203; Bank of S. W. Georgia *v.* McGarrah (1904) 120 Ga. 944, 48 S. C. 393, applying § 2649 of Ga. Code; Aldrich *v.* Robinson (U. S. 1862) 2 How. 606; Trowbridge *v.* Cross (1886) 117 Ill. 109; Roberts *v.* McCarthy (1857) 9 Ind. 16; Meridian Nat. Bank *v.* Brandt (1870) 51 Ind. 56; Hewitt *v.* Rankin (1875) 41 Ia. 35; Paige *v.* Paige (1887) 71 Ia. 318, 325, 32 N. W. 360; McKee *v.* Covalt (1905) 71 Kan. 772, 775, 81 Pac. 475; Buffum *v.* Buffum (1861) 49 Me. 108; Dyer *v.* Clark (1843) 5 Met. (46 Mass.) 562, 39 Am. Dec. 697; Way *v.* Stebbins (1882) 47 Mich. 296; Woodward-Holmes Co. *v.* Nudd (1894) 58 Minn. 236, 59 N. W. 1010, 27 L. R. A. 340, 49 Am. St. R. 503; Hanway *v.* Robertshaw (1874) 49 Miss. 758, (1876) 52 Miss. 713; Young *v.* Thrasher (1892) 115 Mo. 222; Smith *v.* Jones (1885) 18 Neb. 481, 25 N. W. 624; Craighead *v.* Pike (1899) 58 N. J. Eq. 15, 43 Atl. 424, 427; Jones *v.* Beekman (N. J. Eq. 1900) 47 Atl. 71; Smith *v.* Jackson (N. Y. 1833) 2 Edw. Ch. 28; Buchan *v.* Sumner (N. Y. 1847) 2 Barb. Ch. 165; Fairchild *v.* Fairchild (1876) 64 N. Y. 471; Greenwood *v.* Marvin (1888) 111 N. Y. 423, 19 N. E. 228; Smith *v.* Cowles (N. Y. 1903) 81 App. Div. 328, 81 N. Y. Supp. 524; Stroud *v.* Stroud (1868) Phil. L. (61 N. C.) 525, applying Code, c. 43, § 2, now Rev. St. (1905) c. 33, § 1579; Adams *v.* Church (1902) 42 Ore. 270, 70 Pac. 1037; McAllister *v.* Montgomery (1816) 3 Hay. (5 Tenn.) 94; Piper *v.* Smith (1858) 1 Head (38 Tenn.) 930; State *ex rel.* Bogey *v.* Neal (1902) 29 Wash. 391, 69 Pac. 1103; Cunning-

is, however, considerable diversity of opinion as to the evidence required to show that lands owned by partners are firm property. The weight of authority is decidedly in favor of the view that if such lands are treated by the partners as a portion of the firm assets, they are to be treated by the courts as firm property, and, hence, as personalty to the limited extent mentioned above.[56] Some courts, on the other hand, favor the presumption that land, deeded to partners, is held by them as individual tenants in common, and require this presumption to be overcome by any one who claims that it is firm property.[57] Again, in some jurisdictions, this presumption is overcome by evidence that such land was bought with

---

ham *v.* Ward (1888) 30 W. Va. 572, 5 S. E. 646; Martin *v.* Morris (1885) 62 Wis. 418, 427; Weld *v.* The Johnson Mfg. Co. (1894) 86 Wis. 552, 561, 57 N. W. 374; Claggett *v.* Kilbourne (U. S. 1861) 1 Black 346, 17 L. Ed. 213; Riddle *v.* Whitehill (1889) 134 U. S. 621, 10 Sup. Ct. 924, 34 L. Ed. 282.

[56]Gillett *v.* Gaffney (1877) 3 Colo. 362; Breen *v.* Richardson (1883) 6 Colo. 605; Loubat *v.* Nourse (1853) 5 Fla. 350; Robertson *v.* Baker (1866-7) 11 Fla. 192; Price & Wife *v.* Hicks (1874) 14 Fla. 565,—not partnership property in this case; Makee & Peck *v.* Dominis & Bishop (1874) 3 Haw. 579; Mauck *v.* Mauck (1870) 54 Ill. 281; Faulds *v.* Yates (1870) 57 Ill. 416; Bopp *v.* Fox (1872) 63 Ill. 540; Hyman *v.* Peters (1888) 30 Ill. App. 134; Moran *v.* Palmer (1865) 13 Mich. 367; Merritt *v.* Dickey (1878) 38 Mich. 41; Quinn's Adm'r *v.* Quinn (1899) 22 Mont. 403, 56 Pac. 824; Bowen *v.* Billings (1882) 13 Neb. 439, 14 N. W. 152; Thorne *v.* Bowen (1882) 13 Neb. 445, 14 N. W. 155; Jarvis *v.* Brooks (1853) 27 N. H. 37; Foster *v.* Sargent (1903) 72 N. H. 170, 55 Atl. 423; Baldwin *v.* Johnson (1831) Saxton (1 N. J. Eq.) 441; Delmonico *v.* Guillaume (N. Y. 1845) 2 Sandf. Ch. 366; Sage *v.* Sherman (1849) 2 N. Y. 417; Baird *v.* Baird's Heirs (1837) 1 Dev. & B. Eq. (21 N. C.) 524; Sparger *v.* Moore (1895) 117 N. C. 449, 23 S. E. 359; Greene *v.* Greene (1824) 1 Oh. 535,—articles of partnership provided that at its termination all the property should be sold; Sumner *v.* Hampson (1838) 8 Oh. 328; Ludlow *v.* Cooper (1854) 4 Oh. St. 1; Page *v.* Thomas (1885) 43 Oh. St. 38; Tillinghast *v.* Champlin (1856) 4 R. I. 173; Lime Rock Bank *v.* Phetteplace (1864) 8 R. I. 56; Ex'rs of Richardson *v.* Ex'r of Wyatt (S. C. 1807) 2 Des. Eq. 471; Winslow *v.* Chiffelle (S. C. 1824) Harp. Eq. 25; Wilson *v.* Wilson (1906) 74 S. C. 30, 54 S. E. 227; Betts *v.* Letcher (1890) 1 S. D. 182, 46 N. W. 193; McAllister *v.* Montgomery (1816) 3 Hay. (5 Tenn.) 94; Hunt *v.* Benson (1841) 2 Humph. (21 Tenn.) 459; Boyers *v.* Elliott (1846) 7 Humph. (26 Tenn.) 204; Baldwin *v.* Richardson (1870 33 Tex. 16; Washburn *v.* Washburn (1851) 23 Vt. 1576; Diggs' Adm'r *v.* Brown (1884) 78 Va. 292; Zane *v.* Sawtell (1877) 11 W. Va. 43; Fowler *v.* Bailley (1861) 14 Wis. 125; Riedeburg *v.* Schmitt (1888) 71 Wis. 644, 38 N. W. 336; McCauley *v.* Fulton (1872) 44 Cal. 355; Walling *v.* Burgess (1889) 122 Ind. 299, 22 N. E. 419; Dickey *v.* Shirk (1890) 128 Ind. 278, 27 N. E. 733; Foster *v.* Sargent (1903) 72 N. H. 170, 55 Atl. 423; Van Brocklen *v.* Smeallie (1893) 140 N. Y. 70, 35 N. E. 415; 55 N. Y. St. Rep. 263, rev's'g 64 Hun. 467, 46 St. Rep. 230; Dawson *v.* Parsons (1894) 10 Misc. 428, 63 N. Y. St. Rep. 320, 38 N. Y. Supp. 1000; Tillinghast *v.* Champlin (1856) 4 R. I. 173.

[57]Lang's Heirs *v.* Waring (1850) 17 Ala. 145; Brewer *v.* Brown (1880) 68 Ala. 210; Hartnett *v.* Stillwell (1904) 121 Ga. 386, 49 S. E. 276, 104 Am. St. Rep. 151; Thompson *v.* Holden (1893) 117 Mo. 118, 23 S. W. 905; Tregea *v.* Mills (1903) 11 Wyo. 438, 72 Pac. 578.

firm funds;[58] while in others, the evidence must show that it was bought for the firm, and used by it in its business.[59]

One of the corollaries of this theory of partial conversion is, that when firm debts have been paid and the partners' equities adjusted, any residuum of firm lands or of the proceeds therefrom, is to be treated as realty.[60] A deceased partner's share thereof descends to his heirs;[61] in it his widow is entitled to dower;[62]

---

[58]Cal. Civil Code § 2406; Bopp *v.* Fox (1872) 63 Ill. 540; Morrill *v.* Colehour (1876) 82 Ill. 618; Evans *v.* Hawley (1872) 35 Ia. 83; Quinn *v.* Quinn (1899) 22 Mont. 403, 56 Pac. 824, Rev. Code § 5473 (Civil Code § 3195; Jarvis *v.* Brooks (1853) 27 N. H. 37; Hill *v.* Beach (1858) 1 Beas. (12 N. J. Eq.) 31, 38; Smith *v.* Jackson (N. Y. 1833) 2 Edw. Ch. 28; Collumb *v.* Read (1862) 24 N. Y. 505; King *v.* Weeks (1874) 70 N. C. 372; North Dakota Civil Code § 5826; South Dakota Civil Code § 1731.

[59]Pugh *v.* Currie (1843) 5 Ala. 446; Bank of S. W. Georgia *v.* McGarrah (1904) 120 Ga. 944, 48 S. E. 393; Morgan *v.* Olvey (1876) 53 Ind. 6; Chandler *v.* Jessup (1892) 132 Ind. 351, 31 N. E. 1109; Fordyce *v.* Hicks (1890) 80 Ia. 272; Crooker *v.* Crooker (1858) 46 Me. 250; Richardson *v.* Manson (1869) 101 Mass. 482; Burnside *v.* Merrick (1842) 4 Met. (45 Mass.) 537; Arnold *v.* Wainwright (1861) 6 Minn. 358; Alexander *v.* Kimbro (1873) 49 Miss. 529, 538; Whitney *v.* Cotten (1876) 53 Miss. 689; Sykes *v.* Sykes (1873) 49 Miss. 190, 216; Willet *v.* Brown (1877) 65 Mo. 138, 146; Parker *v.* Bowles (1876) 57 N. H. 491; Coles *v.* Coles (N. Y. 1818) 15 Johns. 159; Buckley *v.* Buckley (N. Y. 1850) 11 Barb. 43; Smith *v.* Cowles (N. Y. 1903) 81 App. Div. 328, 81 N. Y. Supp. 524; Patton *v.* Patton (1864) 60 N. C. 572, Win. Eq. 20; Dodson *v.* Dodson (1894) 20 Ore. 349, 37 Pac. 542; City of Providence *v.* Bullock (1884) 14 R. I. 353.

[60]Espy *v.* Comer (1884) 76 Ala. 501, 505; Power *v.* Robinson (1890) 90 Ala. 225, 8 So. 10; Percifull *v.* Platt (1880) 36 Ark. 456, 464; Georgia Code (1895) § 2649; Matlock *v.* Matlock (1854) 5 Ind. 403; Hewitt *v.* Rankin (1875) 41 Ia. 35, 39; Galbraith *v.* Gedge (1855) 16 B. Mon. (55 Ky.) 631; Dyer *v.* Clark (1843) 5 Met. (46 Mass.) 562, 39 Am. Dec. 697; Comstock *v.* McDonald (1901) 126 Mich. 142, 85 N. W. 579; Scruggs *v.* Blair (1870) 44 Miss. 406; Uhler *v.* Semple (1869) 5 C. E. Green (20 N. J. Eq.) 288; Buchan *v.* Sumner (N. Y. 1847) 2 Barb. Ch. 165; Greenwood *v.* Marvin (1888) 111 N. Y. 423, 19 N. E. 228; Martin *v.* Morris (1885) 62 Wis. 418, 22 N. W. 525; Shanks *v.* Klein (1881) 104 U. S. 18, 26 L. Ed. 635.

[61]Lang's Heirs *v.* Waring (1854) 25 Ala. 625, 60 Am. Dec. 533; Aldrich *v.* Robinson (1862) 2 Haw. 606; Un Wong *v.* Kan Chu (1884) 5 Haw. 225; Branner *v.* Nichols (1900) 61 Kan. 356, 59 Pac. 356; Shearer *v.* Shearer (1867) 98 Mass. 107; Way *v.* Stebbins (1882) 47 Mich. 276; Yeatman *v.* Woods (1834) 6 Yerg. (14 Tenn.) 20; Griffey *v.* Northcutt (1871) 5 Heisk. (52 Tenn.) 746; Solomon *v.* Fitzgerald Co. (1872) 7 Heisk. (54 Tenn.) 552; Williamson *v.* Fontain (1874) 6 Baxt. (66 Tenn.) 212; Martin *v.* Morris (1885) 62 Wis. 418, 22 N. W. 525; Weld *v.* The Johnson Mfg. Co. (1894) 86 Wis. 552, 57 N. W. 374.

[62]Strong *v.* Lord (1883) 107 Ill. 25; Galbraith *v.* Tracy (1894) 153 Ill. 54, 38 N. E. 937; Hale *v.* Plummer (1855) 6 Ind. 121; Walling *v.* Burgess (1889) 122 Ind. 299, 22 N. E. 419; Harris *v.* Harris (1891) 153 Mass. 439, 26 N. E. 1117; Woodward-Holmes Co. *v.* Nudd (1894) 58 Minn. 236, 59 N. W. 1010, 27 L. R. A. 240, 49 Am. St. Rep. 503; Young *v.* Thrasher (1892) 115 Mo. 222; Craighead *v.* Pike (1899) 54 N. J. Eq. 15, 43 Atl. 424; Stroud *v.* Stroud (1868) Phil. L. (61 N. C.) 525.

and any land remaining unsold is subject to partition.[63] Whether, in such cases, the land not needed for the payment of firm debts and the adjustment of firm equities, is to be treated as preserving its real estate *status* through the entire period of its ownership by the firm,[64] or as being converted into personalty upon the firm's acquisition of it, and then reconverted upon the settlement of the firm's affairs,[65] has been a source of much controversy. The weight of authority favors the latter view.[66] Many courts prefer to state the doctrine substantially in this way: The partners hold the legal title to such land in trust for the payment of firm debts and adjustment of the equities between the partners, and until such trust is executed, neither the rights of heirs nor of dower nor of homestead attach thereto.[67]

---

[63]Brewer *v.* Brewer (1880) 68 Ala. 210; Thayer *v.* Lane (Mich. 1843) Walk. Ch. 200; Way *v.* Stebbins (1882) 47 Mich. 296; Holmes *v.* McGee (1859) 27 Mo. 597; Molineaux *v.* Raynolds (1896) 54 N. J. Eq. 559, 35 Atl. 536; Smith *v.* Cowles (N. Y. 1903) 81 App. Div. 328, 81 N. Y. Supp. 524; Greene *v.* Graham (1831) 5 Oh. 264.

[64]Powers *v.* Robinson (1890) 90 Ala. 225, 8 So. 10; Blanchard *v.* Floyd & Huguley (1890) 93 Ala. 53, 9 So. 418; Percifull *v.* Platt (1880) 36 Ark. 456, 465; McCauley *v.* Fulton (1872) 44 Cal. 355, 362-3; Hanway *v.* Robertshaw (1874) 49 Miss. 758, 760 (1876) 52 Miss. 713; Holmes *v.* McGee (1859) 27 Mo. 597; Tattersall *v.* Nevels (1906) 77 Neb. 843, 110 N. W. 708; Smith *v.* Jackson (N. Y. 1833) 2 Edw. Ch. 28, 31-34; Ferguson *v.* Hall (1867) Phil. Eq. (62 N. C.) 113.

[65]Lenow *v.* Fones (1886) 48 Ark. 563, 4 S. W. 56; Coolidge *v.* Burke (1901) 69 Ark. 237, 62 S. W. 583; French *v.* Vanatta (1907) 83 Ark. 306, 104 S. W. 141, 8 COLUMBIA LAW REVIEW, 208-11; Sykes *v.* Sykes (1873) 49 Miss. 190, 216; Young *v.* Thrasher (1892) 115 Mo. 222; Griffey *v.* Northcutt (1871) 5 Heisk. (52 Tenn.) 746.

[66]Georgia Code (1895) § 2649; Aldrich *v.* Robinson (1862) 2 Haw. 606; Mauck *v.* Mauck (1870) 54 Ill. 281; Bopp *v.* Fox (1872) 63 Ill. 540; Simpson *v.* Leech (1877) 86 Ill. 286; Huston *v.* Neil (1873) 41 Ind. 504; Evans *v.* Hawley (1872) 35 Ia. 83; Paige *v.* Paige (1887) 71 Ia. 318, 32 N. W. 360; McKee *v.* Covalt (1877) 71 Kan. 772; Crooker *v.* Crooker (1858) 46 Me. 250; Comstock *v.* McDonald (1901) 126 Mich. 142, 85 N. W. 579; Woodward-Holmes Co. *v.* Nudd (1894) 58 Minn. 236, 59 N. W. 1010, 27 L. R. A. 340, 49 Am. St. Rep. 503; Scruggs *v.* Blair (1870) 44 Miss. 406; Uhler *v.* Semple (1869) 5 C. E. Green (20 N. J. Eq.) 288, 294; Fairchild *v.* Fairchild (1876) 64 N. Y. 471; Dawson *v.* Parsons (1894) 10 Misc. 428, 63 N. Y. St. Rep. 320. 38 N. Y. Supp. 1000; Hauptmann *v.* Hauptmann (N. Y. 1904) 91 App. Div. 197, 86 N. Y. Supp. 427.

[67]Cole *v.* Mette (1898) 65 Ark. 503, 47 S. W. 407; Dupuy *v.* Leavenworth (1861) 17 Cal. 262; Gillett *v.* Gaffney (1877) 3 Colo. 351, 362-6; Loubat *v.* Nourse (1853) 5 Fla. 350; Robertson *v.* Baker (1866-7) 11 Fla. 192; Hartnett *v.* Stillwell (1904) 121 Ga. 386, 49 S. E. 276, 104 Am. St. Rep. 151; Trowbridge *v.* Cross (1886) 117 Ill. 109, 7 N. E. 347; Henry *v.* Anderson (1881) 77 Ind. 361; Barkly *v.* Tapp (1882) 87 Ind. 25; Dickey *v.* Shirk (1890) 128 Ind. 278; Hewitt *v.* Rankin (1875) 41 Ia. 35; Drake *v.* Moon (1885) 66 Ia. 58; Hoyt *v.* Hoyt (1886) 69 Ia. 174; Johnson *v.* Clark (1877) 18 Kan. 157; Dyer *v.* Clark (1843) 5 Met. (46 Mass.) 562, 39 Am. Dec. 697; Michigan Trust Co. *v.* Chapin (1895) 106 Mich. 384, 64 N. W. 334,—no homestead allowed; Arnold *v.* Wainright (1861) 6 Minn. 358, 6 G. 241; Whitney *v.* Cotten (1876) 53 Miss. 689; Matthews *v.* Hunter (1878) 67

CONVEYANCE BY PARTNERS.

If partnership lands retain their *status* of realty until needed to pay debts and adjust partners' equities, the wives of partners should join in a conveyance of such lands, even during the life of the partnership, and should be made parties to an action for their sale.[68] On the other hand, if they are converted into personalty upon the firm's acquisition of them or if they are held by the partners in trust for the firm, the partners can convey a perfect title without their wives joining in the deeds; and the wives, as well as the widows of deceased partners, are not necessary parties to an action for the sale of lands to pay debts.[69]

TRANSFERS BY SURVIVING PARTNER.

It is the duty of the surviving partner to wind up the affairs of the firm. In order that he may perform this duty, he must possess the power to convert the assets into cash, to pay the debts and distribute any remaining balance between himself and the representatives of the deceased partner. If the firm estate consists entirely of personal property, the authorities uniformly hold that the survivor can give a perfect title to all the estate by a transfer in his individual name. The legal title of the firm survives to him

Mo. 293; Messer *v.* Messer (1879) 59 N. H. 375; Partridge *v.* Wells (1878) 3 Stew. (30 N. J. Eq.) 176, aff'd (1879) 31 N. J. Eq. 362; Fairchild *v.* Fairchild (1876) 64 N. Y. 471; Tarbel *v.* Brady (N. Y. 1878) 7 Abb. N. C. 571; Greenwood *v.* Marvin (1888) 111 N. Y. 423, 436, 19 N. E. 228; Johnson *v.* Donovan (N. Y. 1888) 50 Hun. 215, 20 N. Y. St. Rep. 30, 2 N. Y. Supp. 358; Maloy *v.* Associated Lace Makers' Co. (1890) 30 N. Y. St. Rep. 153, 8 N. Y. Supp. 815; King *v.* Weeks (1874) 70 N. C. 372; Greene *v.* Greene (1824) 1 Oh. 535,—dower not allowed; Tillinghast *v.* Champlin (1856) 4 R. I. 173; Hunt *v.* Benson (1841) 2 Humph. (21 Tenn.) 459; Dewey *v.* Dewey (1863) 35 Vt. 555; Hopkins *v.* Prichard (1902) 51 W. Va. 385, 395; Bird *v.* Morrison (1860) 12 Wis. 138; Bergeron *v.* Richardott (1882) 55 Wis. 129; Hoxie *v.* Carr (1832) 1 Sum. 173, 12 Fed. Cas. 746; Shanks *v.* Klein (1881) 104 U. S. 18, 26 L. Ed. 635; Schlichter Jute Cordage Co. *v.* Mullqueen (1906) 142 Fed. 583.

[68] Pugh *v.* Currie (1843) 5 Ala. 446; Brewer *v.* Browne (1880) 68 Ala. 210; Butts *v.* Cooper (Ala. 1907) 14 So. 616, 618; Duhring *v.* Duhring (1854) 20 Mo. 174; Smith *v.* Jackson (N. Y. 1833) 2 Edw. Ch. 28, 35; Huber *v.* Case (N. Y. 1904) 93 App. Div. 479, 87 N. Y. Supp. 663.

[69] Drewry *v.* Montgomery (1873) 28 Ark. 256; Welch *v.* McKenzie (1899) 66 Ark. 251, 50 S. W. 505; Loubat *v.* Nourse (1853) 5 Fla. 350; Ferris *v.* Van Ingen (1900) 110 Ga. 102, 35 S. E. 347, 352; Bopp *v.* Fox (1872) 63 Ill. 540; Simpson *v.* Leech (1877) 86 Ill. 286; Huston *v.* Neil (1873) 41 Ind. 504; Dickey *v.* Shirk (1890) 128 Ind. 278; Hewitt *v.* Rankin (1875) 41 Ia. 35; Woodward-Holmes Co. *v.* Nudd (1894) 58 Minn. 236, 59 N. W. 1010, 27 L. R. A. 340, 49 Am. St. Rep. 503; Sage *v.* Sherman (1849) 2 N. Y. 417; Tarbel *v.* Bradley (N. Y. 1878) 7 Abb. N. C. 273; Greenwood *v.* Marvin (1888) 111 N. Y. 423, 436, 437, 19 N. E. 228; Dawson *v.* Parsons (N. Y. 1894) 10 Misc. 428, 431-2; Hauptmann *v.* Hauptmann (N. Y. 1904) 91 App. Div. 197; Meily *v.* Wood (1872) 71 Pa. 488, 494.

and he passes on a complete and unqualified ownership to his purchaser.[70] It is generally held that he has full power to make a general assignment of firm property for the benefit of firm creditors.[71]

But when a part of the firm assets is real estate, his ability to convey a perfect title is questioned. If the land has been converted into personalty by a written agreement, which can be made a part of the record, there seems to be no doubt that a perfect legal title as well as full equitable ownership can be conveyed by the surviving partner.[72] If a power to convey has not been so given as to become a part of the record, it may be necessary for the representatives of the deceased partner to join in the conveyance, in order to perfect the legal title, although the land may have been converted out and out into personalty; and hence, the survivor be entitled to transfer full equitable ownership.[73] In case there has been no out and out conversion, but the land is needed to pay firm debts and adjust the partners' equities, the survivor can transfer full equitable ownership to his purchaser, and the heirs of the deceased partner will be compelled to perfect the legal title.[74]

---

[70]Knox *v.* Gye (1872) L. R. 5 H. L. 656, 42 L. J. Ch. 234; Burchinell *v.* Koon (1896) 8 Colo. App. 463, 46 Pac. 932, (1898) 25 Colo. 59, 52 Pac. 1100; Galbraith *v.* Tracy (1894) 153 Ill. 54, 38 N. E. 937, 28 L. R. A. 129, 46 Am. St. Rep. 867; Nehbross *v.* Bliss (1882) 88 N. Y. 600; Miller *v.* Berry (1905) 19 S. D. 625, 104 N. W. 311; Gresham *v.* Harcourt (1899) 93 Tex. 149, 53 S. W. 1019.

[71]Emerson *v.* Senter (1885) 118 U. S. 3, 6 Sup. Ct. 981, 30 L. Ed. 49; Bartlett *v.* Smith (Neb. 1904) 98 N. W. 687; Williams *v.* Whedon (1888) 109 N. Y. 333, 16 N. E. 365, 4 Am. St. Rep. 460; Patton *v.* Leftwich (1889) 86 Va. 421, 10 S. E. 686, 6 L. R. A. 569, 19 Am. St. Rep. 992.

In Missouri a statute prohibits the surviving partner from making a general assignment. Barnes *v.* Stanley (1902) 95 Mo. App. 688, 69 S. W. 682.

[72]Davis *v.* Smith (1887) 82 Ala. 198, 2 So. 897; Darrow *v.* Calkins (1897) 154 N. Y. 503, 49 N. E. 61, 48 L. R. A. 299, 61 Am. St. Rep. 637; Meily *v.* Wood (1872) 71 Pa. 488, 494; Du Bree *v.* Albert (1882) 100 Pa. 483; Moore *v* Wood (1895) 171 Pa. 365, 33 Atl. 63.

[73]French *v.* Vanatta (1907) 83 Ark. 306, 104 S. W. 141, 8 COLUMBIA LAW REVIEW 208 (*semble*); Steinberg *v.* Larkin (1897) 58 Kan. 201, 48 Pac. 861, 37 L. R. A. 195; Cornwall *v.* Cornwall (1869) 7 Bush (69 Ky.) 369, 373; Whitney *v.* Cotten (1876) 53 Miss. 689; Clark *v.* Fleischmann (Neb. 1908) 116 N. W. 290; Hill *v.* Beach (1858) 1 Beas. (12 N. J. Eq.) 31, 38; Rammelsberg *v.* Mitchell (1875) 23 Oh. St. 22, 52-4; Title & Trust Co. *v* Bell (1898) 188 Pa. 637, 4 Atl. 637; McPherson *v.* Swift (S. D. 1908) 116 N. W. 76; State *ex rel.* Bogey *v.* Neal (1902) 29 Wash. 391, 69 Pac. 1103; Sprague Mfg. Co. *v.* Hoyt (1886) 29 Fed. 421.

[74]Hartnett *v.* Stillwell (1904) 121 Ga. 356, 49 S. E. 276, 104 Am. St. Rep. 151,—applying §2649, Code of 1895; Walling *v.* Burgess (1889) 122 Ind. 299, 22 N. E. 419; Johnson *v.* Clark (1877) 18 Kan. 157; Steinberg *v.* Larkin (1897) 58 Kan. 201, 48 Pac. 861, 37 L. R. A. 195; Merritt *v.* Dickey

SURVIVOR AND HEIRS AS TENANTS IN COMMON.

But suppose a part of the firm real estate is not needed to pay firm debts or to adjust the equities of the partners:—what right of disposal has the survivor over this? Under the English doctrine, stated at the opening of this article, he has the same right that he has over any other firm property. In this country, he has the same right, when the firm realty has been converted out and out into personalty.[75] But when no such conversion has taken place, our courts are prone to assert that such surplus realty is owned by the survivor and the heirs of the deceased partner, as tenants in common,[76] and, hence, it is subject to partition,[77] On the other hand, it has been repeatedly decided that the survivor and the heirs of the deceased partner are not tenants in common in such surplus,[78] and, in some states, it is the doctrine of the courts or is declared by statute that all partnership property is to be converted into cash by the survivor.[79]

(1878) 38 Mich. 41; Hanway *v.* Robertshaw (1874) 49 Miss. 758, (1876) 52 Miss. 713; Delmonico *v.* Guillaume (N. Y. 1845) 2 Sandf. Ch. 366; Sparger *v.* Moore (1895) 117 N. C. 449; Tillinghast *v.* Champlin (1856) 4 R. I. 173; Williamson *v.* Fontain (1874) 7 Baxt. (66 Tenn.) 212; Weld *v* The Johnson Mfg. Co. (1894) 86 Wis. 552, 57 N. W. 374; Shanks *v.* Klein (1881) 104 U. S. 18, 26 L. Ed. 635; Schlichter Jute Cordage Co. *v.* Mulqueen (1906) 142 Fed. 583.

[75]Breen *v.* Richardson (1883) 6 Colo. 605; Hyman *v.* Peters (1888) 30 Ill. App, 134; Clark *v* Fleischmann (Neb. 1908) 116 N. W. 290; Patrick *v.* Patrick (1906) 71 N. J. Eq. 347, 63 Atl. 848; Buckley *v.* Doig (1907) 188 N. Y. 238, 80 N. E. 913; Du Bree *v.* Albert (1882) 100 Pa. 483; Miller *v.* Ferguson (1907) 107 Va. 249, 57 S. E. 649, 122 Am. St. Rep. 840.

[76]Espy *v.* Comer (1884) 76 Ala. 501, 505; Powers *v.* Robinson (1890) 90 Ala. 225, 8 So. 10; Blanchard *v.* Floyd & Huguley (1890) 93 Ala. 53, 9 So. 418; McCauley *v.* Fulton (1872) 44 Cal. 355; Loubat *v.* Nourse (1853) 5 Fla. 350; Hartnett *v.* Stillwell (1904) 121 Ga. 386, 49 S. E. 276, 104 Am St. Rep. 151; Blake *v.* Nutter (1841) 19 Me. 16; Dyer *v.* Clark (1843) 5 Met. (46 Mass.) 562, 39 Am. Dec. 697; Scruggs *v.* Blair (1870) 44 Miss. 406; Alexander *v.* Kimbro (1873) 49 Miss. 529; Smith *v.* Jackson (N. Y. 1833) 2 Edw. Ch. 28; Treadwell *v.* Williams (N. Y. 1862) 9 Bosw. 649; Hale *v.* Henrie (Pa. 1834) 2 Watts 143; Cundey *v.* Hall (1904) 208 Pa. 335, 57 Atl. 761, 101 Am. St. Rep. 938.

[77]Brewer *v.* Browne (1880) 68 Ala. 210; Thayer *v.* Lane (Mich. 1843) Walk. Ch 200; Way *v.* Stebbins (1882) 47 Mich. 296; Comstock *v.* McDonald (1901) 126 Mich. 142, 85 N. W. 579; Molineaux *v.* Raynolds (1896) 54 N. J. Eq. 559, 35 Atl. 536; Craighead *v.* Pike (1899) 58 N. J. Eq. 15, 43 Atl. 424; Smith *v.* Cowles (N. Y. 1903) 81 App. Div. 328, 81 N. Y. Supp. 524; Greene *v.* Graham (1831) 5 Oh. 264.

[78]Galbraith *v.* Tracy (1894) 153 Ill. 54, 38 N. E. 937; Ingraham *v.* Mariner (1901) 194 Ill. 269, 62 N. E. 609; Needham *v.* Wright (1895) 140 Ind. 190, 39 N. E. 510; McKee *v.* Covalt (1905) 71 Kan. 772; Galbraith *v.* Gedge (1855) 16 B. Mon. (55 Ky.) 631; Hanson *v.* Hanson (1903) 4 Lindsay (Neb. Unof.) 880; Cilley *v.* Huse (1860) 40 N. H. 358; Leary *v.* Boggs (1886) 1 N. Y. St. Rep. 571; Preston *v.* Fitch (1893) 137 N. Y. 41, 33 N. E. 77; Baird *v.* Baird's Heirs (1837) 1 Dev. & B. Eq. (21 N. C.) 524; Hoxie *v.* Carr (U. S. 1832) 1 Sum. 173, 12 Fed. Cas. 746.

[79]Moran *v.* McInerney (1900) 129 Cal. 29, 61 Pac. 575; Ingraham *v.* Mariner (1901) 194 Ill. 269, 62 N. E. 609; MacFarlan *v.* MacFarlan (N. Y.

PARTNERSHIP TENURE.

If the courts of England had adopted the conception of a partnership held by the Law Merchant, as did the courts of Scotland,[80] and had applied that view consistently, much confusion and "many distressing doubts" would have been avoided. No attempt would have been made to define partnership estate in terms of the common law.[81] The courts would not have described partners as tenants in common of firm lands, nor as joint tenants without the right of survivorship; nor would they have described the partnership estate in firm lands as a resulting trust.[82] On the other hand, they would have declared, as courts are now coming to declare, that the partnership holds real estate by a tenure which is *sui generis*,[83] that there is a firm tenure which is quite distinct from that, under which common owners, who are not partners, hold their property.[84]

1894) 82 Hun. 238, 63 N. Y. St. Rep. 589; Baird *v.* Baird's Heirs (1837) 1 Dev. & B. Eq. (21 N. C.) 524; McPherson *v.* Swift (S. D. 1908) 116 N. W. 76; McAllister *v.* Montgomery (1816) 3 Hay. (5 Tenn.) 94, §3678, Code of Tennessee (1896); Utah Compiled Laws (1907) §3918; Pierce *v.* Trigg (1839) 10 Leigh (37 Va.) 406.

[80]Bell's Comm. (5th Ed.) Vol. II, pp. 613-15.

[81]Blake *v.* Nutter (1841) 19 Me. 16, 17; By counsel, *arguendo*): "There is no such tenure of lands known to the law as a copartnership tenure. They must be either held in joint tenancy or tenancy in common."

Story on Partnership (7th Ed.) 91: "The true nature, character, and extent of the rights and interests of partners in the partnership capital, stock, funds and effects, is, therefore, to be ascertained by the doctrines of law applicable to that relation, and not by the mere analogies furnished by joint tenancy or by tenancy in common."

[82]Washburn on Real Property (6th Ed.) 898: "All partnership assets are held in trust to pay, first, the partnership debts; and then the partnership balances, * * * As soon as these liens are satisfied by the payment of partnership debts and the discharge of the partnership balances, equity removes the trust mantle from the property, leaving the legal estate of the owners therein subject to all the incidents of tenancy in common." Followed in Tiedeman on Real Property (3d Ed.) §§ 184-5, and Reeves on Real Property, § 80.

[83]Morrison *v.* Austin State Bank (1905) 213 Ill. 472, 480, 72 N. E. 1109, 1111, 104 Am. St. Rep. 225: "The legal characteristics of partnership property, and the interests, powers and rights of the partners relative to the same are peculiar, and cannot be well assimilated to any other class of property when viewed in its relation to its ownership. While it has many characteristics of estates in common and in joint tenancy, yet the interest of partners in firm property is neither that of joint tenants nor that of tenants in common, but is *sui generis*."

[84]French *v.* Vanatta (1907) 83 Ark. 306, 312, 104 S. W. 141, 143; Taft *v.* Schwamb (1875) 80 Ill. 289; Henry v. Anderson (1881) 77 Ind. 361, 363: "It is not true that Henry was granting land to himself. He was granting it to a firm of which he was a member. Although individuals compose partnerships, yet the partnership is a legal entity, distinct and different from the persons who constitute its component parts"; Hubbardston Lumber Co. *v.* Covert (1877) 35 Mich. 254, 260: "The assets are held in a sort of community, but the partners do not hold as common

That a partnership holds its property by a tenure, radically different from that of common owners,[85] is disclosed in controversies between judgment creditors of the firm and judgment creditors of a partner. Although a creditor of the latter class may levy his execution upon firm property at common law,[86] the lien, which he obtains, is not on the partnership title, but on the debtor partner's share in the property levied upon.[87] Accordingly, if the partnership is insolvent, his levy will yield nothing, and the sheriff may return the execution *nulla bona*.[88] Moreover, the firm, for the purpose of paying firm debts, may sell the property levied on, and give a perfect title to a purchaser.[89] Again, the individual creditor gets no legal interest in the firm property levied on, and the value of his lien thereon is not fixed by the value of his debtor's

---

tenants or joint tenants"; Bowen *v.* Billings (1882) 13 Neb. 439, 14 N. W. 152; Thorne *v.* Bowen (1882) 13 Neb. 445, 14 N. W. 155, "the purchaser is the firm"; Smith *v.* Jones (1885) 18 Neb. 481, 25 N. W. 624; Hanson *v.* Hanson (1903) 4 Lindsey (Neb. Unof.) 1880; Cilley *v.* Huse (1860) 40 N. H. 358; Matlack *v.* James (1860) 2 Beas. (13 N. J. Eq.) 126; Greenwood *v.* Marvin (1888) 111 N. Y. 423, 437, 19 N. E. 228; Van Brocklen *v.* Smeallie (1893) 140 N. Y. 70, 35 N. E. 415, 55 N. Y. St. Rep. 263, rev's'g 64 Hun. 467, 46 N. Y. St. Rep. 230; Matter of Wormser (N. Y. 1900) 51 App. Div. 441, 64 N. Y. Supp. 897; Baird *v.* Baird's Heirs (1837) 1 Dev. & B. Eq. (21 N. C.) 524, 538; Boyce *v.* Coster (S. C. 1848) 4 Strobh. Eq. 25; Wilson *v.* Wilson (1906) 74 S. C. 30, 54 S. E. 227; Betts *v.* Letcher (1890) 1 S. D. 182, 198, 46 N. W. 193; Hunt *v.* Benson (1841) 2 Humph. (21 Tenn.) 459; Baldwin *v.* Richardson (1870) 33 Tex. 16, 27-9; Utah Compiled Laws (1907) §3918; Dewey *v.* Dewey (1863) 35 Vt. 555; Pierce *v.* Trigg (1839) 10 Leigh (37 Va.) 406; Wheatley's Heirs *v.* Calhoun (1841) 12 Leigh (39 Va.) 264; Jones *v.* Neal (Va. 1856) 2 Pat. & H. 339; Diggs' Adm'r *v.* Brown (1884) 78 Va. 294; Cunningham *v.* Ward (1888) 30 W. Va. 572; 5 S. E. 646; Hopkins *v.* Prichard (1902) 51 W. Va. 385, 41 S. E. 347; Tregea *v.* Mills (1903) 11 Wyo. 438, 72 Pac. 578; Hoxie *v.* Carr (1832) 1 Sum. 173, 12 Fed. Cas. 746; Shanks *v.* Klein (1881) 104 U. S. 18, 26 L. Ed. 635.

[85]Starkweather *v.* Dyer (1907) 30 App. D. C. 146; Price & Wife *v.* Hicks (1874) 14 Fla. 565; Anderson *v.* Goodwin (1906) 125 Ga. 663, 54 S. E. 679; Lowe *v.* Lowe (1878) 13 Bush (76 Ky.) 688; Thompson *v.* Holden (1893) 117 Mo. 118, 23 S. W. 905; Hogle *v.* Lowe (1877) 12 Nev. 286; Parker *v.* Bowles (1876) 57 N. H. 491; Harris *v.* De Raismes (N. J. Eq. 1897) 38 Atl. 637; Coles *v.* Coles (N. Y. 1818) 15 Johns. 159; Baker *v.* Wheeler (N. Y. 1832) 8 Wend. 505, 507; Levine *v.* Goldsmith (N. Y. 1903) 83 App. Div. 399, 82 N. Y. Supp. 299, 13 N. Y. Annotated Cases 123.

[86]Heydon *v.* Heydon (1693) 1 Salk. 392; Johnson *v.* Evans (1844) 7 Man. & G. 240; Branch *v.* Wiseman (1875) 51 Ind. 1; Johnson *v.* Wingfield (Tenn. 1897) 42 S. W. 203; Skavdale *v.* Moyer (1899) 21 Wash. 10; 26 Pac. 841.

[87]Daniel *v.* Owens (1881) 70 Ala. 297; Lane *v.* Lenfest (1889) 40 Minn. 375, 42 N. W. 84; Smith *v.* Jones (1885) 18 Neb. 481, 25 N. W. 624; In the Matter of Smith (N. Y. 1819) 16 Johns. 102, 106; Scrugham *v.* Carter (N. Y. 1834) 12 Wend. 131, 133; Walsh *v.* Adams (N. Y. 1846) 3 Den. 125, 128; Atkins *v.* Saxton (1879) 77 N. Y. 195; Skavdale *v.* Moyer (1899) 21 Wash. 10, 56 Pac. 841.

[88]Eighth National Bank *v.* Fitch (1872) 49 N. Y. 539.

[89]Garbett *v.* Veale (1843) 5 Q. B. 408, 13 L. J. Q. B. 98; Staats *v.* Bristow (1878) 73 N. Y. 264; Coover's Appeal (1857) 29 Pa. 9, 14.

share, at the date of the levy, but is subject to the fluctuations of the firm's affairs during the period between the levy and a settlement which determines what the debtor partner's share amounts to.[90]

If the courts were consistent in applying this doctrine of partnership tenure, they would hold that a deed of land to a partnership by its firm name,[91] or a deed by a partnership in its firm name,[92] would convey a perfect title. Such is the holding in the cases cited in the last two preceding notes. In some jurisdictions, however, a deed to the firm is held to convey title to the individual partners then composing the firm, and oral evidence is admissible

---

[90]Winston *v.* Ewing (1840) 1 Ala. 129; Daniel *v.* Owens (1881) 70 Ala. 297, 301; Lane *v.* Lenfest (1889) 40 Minn. 375, 377, 42 N. W. 84; Smith *v.* Jones (1885) 18 Neb. 481, 25 N. W. 624; Jarvis *v.* Brooke (1853) 27 N. H. 37; Harney *v.* First National Bank (1894) 52 N. J. Eq. 697, 29 Atl. 221; Jones *v.* Beekman (N. J. Eq. 1900) 47 Atl. 71, 79; Buchan *v.* Sumner (N. Y. 1847) 2 Barb. Ch. 165; Martin *v.* Wagener (N. Y. 1873) 1 T. & C. 509; Michalover *v.* Moses (N. Y. 1897) 19 App. Div. 343; Page *v.* Thomas (1885) 43 Oh. St. 38, 1 N. E. 79, 54 Am. St. Rep. 788; Kramer *v.* Nicholson (1847) 7 Pa. 165; Overholt's Appeal (1849) 12 Pa. 222; Erwin's Appeal (1861) 39 Pa. 535; Meily *v.* Wood (1872) 71 Pa. 488, holding that land could not answer the purposes of partnership stock, if one partner could encumber it by judgment against his separate interest; Du Bree *v.* Albert (1882) 100 Pa. 483; Richard *v.* Allen (1887) 119 Pa. 199, 205-6, 11 Atl. 552, 2 Am. St. Rep. 652: "A partnership is a distinct entity, and the joint effects belong to it, and not to the several partners. It follows that the levies on the goods of the firm of Sargent & Holt for the several debts of the individual members of that firm, created no lien upon those goods, and were, in fact, as nugatory as though levied upon the property of a stranger." Skavdale *v.* Moyer (1899) 21 Wash. 10, 15, 56 Pac. 841; Claggett *v.* Kilbourne (U. S. 1861) 1 Black 346, 349, 17 L. Ed. 213; N. Y. Commercial Co. *v.* Francis (1900) 101 Fed. 16, 18, 41 C. C. A. 167.

[91]Carpenter *v.* Zarbuck (1905) 74 Ark. 474, 86 S. W. 299 (good in equity); Kelliher *v.* Sutton (1902) 115 Ia. 632, 89 N. W. 26; Scruggs *v.* Blair (1870) 44 Miss. 406 (good in equity); Tattersall *v.* Nevels (1906) 77 Neb. 843, 110 N. W. 708; Ferris *v.* Blackledge (1874) 71 N. C. 492, 494 (a latent ambiguity, which may be explained by parol); Bank *v.* Johnson (1890) 47 Oh. St. 306, 24 N. E. 503, 8 L. R. A. 614 (good in equity), explaining Stambaugh *v.* Smith (1873) 23 Oh. St. 584; Kelley *v.* Bourne (1887) 15 Ore. 476, 483, 16 Pac. 40 (good in equity); Hunter *v.* Martin (S. C. 1846) 2 Rich. L. 541; Baldwin *v.* Richardson (1870) 33 Tex. 16; Lindsay *v.* Jaffray (1881) 55 Tex. 626, 641; Frost *v.* Wolf (1890) 77 Tex. 455, 14 S. W. 440, 19 Am. St. Rep. 761; Harris *v.* Boyson & Hartgrove (1904) 34 Tex. Civ. App. 532, 80 S. W. 105; Morse *v.* Carpenter (1847) 19 Vt. 613; Dewey *v.* Dewey (1863) 35 Vt. 555; Jones *v.* Neale (Va. 1856) 2 Pat. & H. 339; Sherry *v.* Gilmore (1883) 58 Wis. 324, 332, 17 N. W. 252; Hoffman *v.* Porter (U. S. 1824) 2 Brock. 156.

[92]Long *v.* Slade (1899) 121 Ala. 267, 26 So. 31 (a mortgage of firm realty in the firm name of Long & Co. by Long to secure a firm debt held valid); Ferguson *v.* Hanauer (1892) 56 Ark. 179, 19 S. W. 749 (deed of trust of firm realty by one partner in firm name, with the consent and in the presence of the other partner "operates as an effectual conveyance of the land"); McKee *v.* Covalt (1905) 71 Kan. 772, 81 Pac. 475; Baldwin *v.* Richardson (1870) 33 Tex. 16, 27-9.

to indentify such members.[93] Other courts hold that "when a deed is made to a partnership, the legal title vests in such of the members of the firm individually as are named in the conveyance." [94] Still others hold that a deed to a partnership in its firm name conveys nothing, as it does not contain the name of a grantee;[95] and that a deed by a partnership in its firm name conveys nothing.[96]

CONCLUSION.

It is apparent from the foregoing study of authorities that the doctrines in this country relating to partnership real estate are most confused and unsatisfactory. To repeat Judge Story's words, already quoted, they are "open to many distressing doubts." How are these doubts to be dispelled and this confusion to be cleared up? The answer, we submit, is very simple. Treat a partnership as a legal entity, at least so far as firm title is concerned; and give full effect to the principle that a partner is not a co-owner of firm property, but that his interest in it is only a right to his proportion of the cash assets of the firm after its debts are paid.[97]

FRANCIS M. BURDICK.

COLUMBIA UNIVERSITY.

---

[93]Lindsay *v.* Hoke & Abernathy (1852) 21 Ala. 542, 544; Murphy *v.* Abrams (1874) 50 Ala. 293; Brewer *v.* Browne (1880) 68 Ala. 210; Powers *v.* Robinson (1890) 90 Ala. 225, 8 So. 10; Blanchard *v.* Floyd & Huguley (1890) 93 Ala. 53, 9 So. 418; Baker *v.* Middlebrook (1888) 81 Ga. 491; Hartnett *v.* Stillwell (1904) 121 Ga. 386, 48 S. E. 276, 104 Am. St. Rep. 151.

[94]Holmes *v.* Jarrett (1872) 7 Heisk. (54 Tenn.) 506. *Accord,* Percifull *v.* Platt (1880) 36 Ark. 456; Cole *v.* Mette (1898) 65 Ark. 503, 47 S. W. 407; Winter *v.* Stock (1866) 29 Cal. 408, 89 Am. Dec. 57; Arthur *v.* Weston (1856) 22 Mo. 378; Reinhard *v.* The Va. Lead Mining Co. (1891) 107 Mo. 616, 18 S. W. 17; Moreau *v.* Saffrans & Co. (1856) 3 Sneed (35 Tenn.) 595.

[95]Silverman *v.* Kristufek (1896) 162 Ill. 22, 230, 44 N. E. 430; Riffel *v.* Land & Lumber Co. (1899) 81 Mo. App. 177.

[96]Jordan *v.* Phillips, Crew & Co. (1899) 126 Ala. 561, 29 So. 831.

[97]In the first tentative draft of a Uniform Partnership Law, by Professor Ames, are found the following provisions: §5, (2): "The legal title to partnership property is vested in the firm, if property acquired under similar circumstances by a natural person would vest in such person. In all other cases, the partnership property belongs to the firm as a *cestui que trust,* or equitable owner." §22: "A partner has no beneficial interest, legal or equitable, in any specific property whether real or personal belonging to the partnership, but only a right to receive in cash his proportion of the surplus of the firm assets remaining after all the claims of firm creditors have been satisfied."